

## **782 KAR 1:040. Appeal procedures.**

RELATES TO: KRS 13B, 151B.225, 163.450-163.470, 29 U.S.C. 722, 34 C.F.R. Part 361

STATUTORY AUTHORITY: KRS 13B.170, 163.470(5), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. KRS 163.470(5) requires the Office for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. 29 U.S.C. 722(c) requires the office to establish procedures so that a person seeking vocational rehabilitation services who is dissatisfied with determinations made by staff of the office concerning the furnishing, denial, reduction, suspension, or cessation of services may request a timely review of those determinations. This administrative regulation establishes those procedures.

Section 1. Hearing Officer. (1) To conduct a hearing under this administrative regulation, a hearing officer shall:

(a) Be trained with respect to the performance of official duties; and

(b) Have knowledge of:

1. The delivery of vocational rehabilitation services;
2. Federal and state laws; and
3. Administrative regulations governing the provision of vocational rehabilitation services.

(2) To conduct a hearing under this administrative regulation, a hearing officer shall not:

(a) Be an employee of a public agency other than an:

1. Administrative law judge;

2. Hearing examiner; or

3. Employee of an institution of higher education;

(b) Be a member of the Office for the Blind State Rehabilitation Council;

(c) Have been involved in a previous decision regarding the vocational rehabilitation of the applicant or eligible individual; or

(d) Have a personal or financial interest that conflicts with the objectivity of the individual.

Section 2. Mediation. (1) The office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.

(2) The office shall maintain a list of qualified mediators.

(3) The director of consumer services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.

(5) The applicant or eligible individual shall attend the mediation and may be represented by an advocate or counsel.

(6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 3. Right of Appeal and Information. (1) An applicant or eligible individual may appeal to the director of consumer services determinations made by the office affecting:

(a) Furnishing of vocational rehabilitation benefits; or

(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;
2. Right to appeal;
3. Right to be represented by an advocate or counsel; and
4. Names and addresses of office individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;
2. By telephone through direct contact with the director of consumer services or a designee;

or

3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of consumer services or a designee shall convene a hearing within sixty (60) days of the request. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate a service provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;
2. Fraud;
3. Collusion; or
4. Criminal conduct; or

(b) This action is requested by an:

1. Applicant;
2. Eligible individual; or
3. Authorized representative of an applicant or eligible individual.

Section 4. Client Assistance Program. The office shall advise an applicant or eligible individual of:

- (1) The existence of the Client Assistance Program, created by KRS 151B.225;
- (2) The services provided by the program; and
- (3) How to contact a program representative.

Section 5. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual may appeal within sixty (60) days of becoming aware, through the exercise of due diligence, of a office determination affecting the provision or denial of vocational rehabilitation services. The applicant or eligible person may appeal, pursuant to the requirements of Section 3 of this administrative regulation.

(2) An applicant or eligible individual shall, when requesting a hearing:

- (a) Identify accommodations required; and
- (b) Submit an issue statement for the hearing.

(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and the State Rehabilitation Council.

(4) The applicant or eligible individual may disqualify for cause up to three (3) hearing officers randomly assigned by the Administrative Hearings Division of the Office of the Attorney

## General.

Section 6. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Education and Workforce Development Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension.

(2) Either party shall have twenty (20) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the Secretary of the Education and Workforce Development Cabinet.

(3) The Secretary of the Education and Workforce Development Cabinet shall consider the record including the recommended order and any timely exceptions filed to the recommended order.

(4) The Secretary of the Education and Workforce Development Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions. (Recodified from 720 KAR 1:040, 7-5-90; Am. 21 Ky.R. 1957; 2706; eff. 5-4-95; 23 Ky.R. 3113; 3771; eff. 5-12-97; 26 Ky.R. 2035; eff. 7-17-2000; 28 Ky.R. 1212; 1635; eff. 1-14-2002; 38 Ky.R. 834; 1133; eff. 12-12-11.)